

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INGENICO INC.,
Plaintiff,

V.

IOENGINE, LLC,
Defendant,

IOENGINE, LLC,
Counterclaim Plaintiff,

V.

INGENICO INC., INGENICO CORP., and
INGENICO GROUP SA,
Counterclaim Defendants.

[illegible]

C.A. No. 18-826-WCB JURY TRIAL

DEMANDED

Original Version: May 27, 2022

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EXHIBITS 2P, 7, 8P, 8D TO THE PRETRIAL ORDER

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Dated: May 27, 2022

Exhibit 2P

IOENGINE’s Statement of Facts That Remain to be Litigated

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INGENICO INC.,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	C.A. No. 18-826-WCB
IOENGINE, LLC,	§	
<i>Defendant,</i>	§	JURY TRIAL DEMANDED
	§	
IOENGINE, LLC,	§	
<i>Counterclaim Plaintiff,</i>	§	
	§	
v.	§	
	§	
INGENICO INC., INGENICO CORP., and	§	
INGENICO GROUP SA,	§	
<i>Counterclaim Defendants.</i>	§	
	§	

EXHIBIT 2P

IOENGINE’S STATEMENT OF FACTS THAT REMAIN TO BE LITIGATED

IOENGINE's Statement of Facts That Remain to be Litigated

IOENGINE presents the following statement of issues of fact that remain to be litigated.

This statement is based on the current status of the case and the Court's rulings to date. IOENGINE reserves the right to modify or supplement this statement in response to subsequent Court rulings and/or attempts by Ingenico to introduce different or additional facts. The following statement of issues of fact is not exhaustive, and IOENGINE reserves the right to prove any matters identified in the pleadings, interrogatory responses, and/or expert reports. IOENGINE intends to offer evidence as to the issues of fact and issues of law identified in this Pretrial Order. IOENGINE further intends to offer evidence to rebut evidence offered by Ingenico. Should the Court determine that any issue identified here is more appropriately considered an issue of law, IOENGINE incorporates such issues by reference into its statement of issues of law that remain to be litigated. To the extent that IOENGINE's statement of issues of law that remain to be litigated contains issues that the Court deems to be issues of fact, those issues are incorporated herein by reference. IOENGINE does not assume the burden of proof with regard to any of the below-listed issues of fact. IOENGINE also incorporates by reference its expert reports to identify the issues to be resolved at trial.¹

I. INFRINGEMENT

1. Whether IOENGINE has shown by a preponderance of the evidence that Ingenico has infringed or is infringing, directly and/or indirectly, literally and/or under the doctrine of equivalents, claims 3 and 10 of the '969 Patent (the "'969 Patent Asserted Claims").

2. Whether IOENGINE has shown by a preponderance of the evidence that Ingenico has infringed or is infringing, directly and/or indirectly, literally and/or under the doctrine of

¹ The Court has requested supplemental briefing on whether any issues relating to 35 U.S.C. § 101 and/or privity should be tried to the jury. IOENGINE reserves the right to revise this statement in light of the Court's decision on the pending summary judgment motions.

IOENGINE's Statement of Facts That Remain to be Litigated

equivalents, claims 56, 90, 101, 105, 114, and 124 of the '703 Patent (the "'703 Patent Asserted Claims") (together with the '969 Patent Asserted Claims, the "Asserted Claims").

3. If IOENGINE has shown infringement of the '969 Patent, whether IOENGINE has shown by a preponderance of the evidence that Ingenico's infringement of the '969 Patent was or is willful.

4. If IOENGINE has shown infringement of the '703 Patent, whether IOENGINE has shown by a preponderance of the evidence that Ingenico's infringement of the '703 Patent was or is willful.

II. INVALIDITY

5. Whether Ingenico is estopped from proving the Asserted Claims are invalid over the asserted prior art.

6. Whether Ingenico has proven by clear and convincing evidence that the Asserted Claims are invalid as anticipated by the prior art.

7. Whether Ingenico has proven by clear and convincing evidence that the Asserted Claims are invalid as rendered obvious in view of the prior art.

8. Whether Ingenico has proven by clear and convincing evidence that the Asserted Claims are patent ineligible under 35 U.S.C. § 101.

9. If necessary, whether IOENGINE has shown sufficient objective indicia to support the non-obviousness of the Asserted Claims and/or to rebut any *prima facie* case of obviousness of the Asserted Claims presented by Ingenico.

10. If necessary, whether Mr. McNulty's conception document (IOENGINE014306 [to be replaced with JX/PX number]) shows conception of the invention as of July 26, 2001.

11. If necessary, whether Mr. McNulty diligently worked to reduce his invention to practice following his conception of the invention.

IOENGINE's Statement of Facts That Remain to be Litigated

III. REMEDIES

12. Whether IOENGINE has shown that it is entitled to damages due to Ingenico's infringement.

13. If IOENGINE is entitled to damages, the amount of those damages.

Exhibit 7

Redacted In Its Entirety

Exhibit 8P

Redacted In Its Entirety

Exhibit 8D

Redacted In Its Entirety

CERTIFICATE OF SERVICE

I, Eve H. Ormerod, hereby certify that on May 27, 2022, a true and correct copy of the foregoing document was served on the following counsel via email:

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